

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

May & June 2011

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To Terminate or Not to Terminate...

That is the question. So you have a teacher who you want to terminate. Can you do it? Of course you can. But be sure you're getting the process right.

The Utah Orderly School Termination Procedures Act, Utah Code, Title 53A, Chapter 8, sets out some very specific procedures that must be followed when dismissing a teacher. The law requires a district to provide employees with a 30 day advance written statement specifying the causes for which a career employee's contract will not be renewed or will be terminated during the contract year, and the termination procedures used by the district. If termination occurs during the contract school year for unsatisfactory performance, the unsatisfactory performance must be documented in at least two evaluations. Also, the district must give the employee an opportunity to correct the problem and provide assistance to that end. If the district still determines that the employee should be terminated, the employee has additional due process rights, including the right to a hearing. Suspension without pay is allowed if the district determines, after an informal conference to discuss the allegations, that the employee might be harmful to students.

This law applies to all public school employees, with the exception of charter

schools.

Even absent the state law, however, federal constitutional law also requires due process before terminating a public school employee—including charter school employees. The Supreme Court has held that public school teachers who are tenured have what's termed "a property interest in continued employment" and cannot be summarily dismissed without at least notice and an opportunity to be heard. The Utah Orderly School Termination Procedures Act provides sufficient due process to meet the constitutional requirements set forth by the Supreme Court but charter schools are well advised to establish and follow some specific procedures prior to terminating a teacher during the school year.

In addition to state law and the federal constitutional requirements, there are other federal laws that protect against terminating individuals regardless of whether the employee is "at will" or not. Even with the Orderly Termination Procedures Act in place, districts should be familiar with these laws.

Two primary federal laws protect employees against (a) retaliation for exposing the district's wrongdoings, and (b) discrimination. The antidiscrimination law prohibits discrimination based on the following categories: race, color, religion, sex, and national origin. Other federal

laws protect against discriminating on the basis of age, disability, or pregnancy for women. While is it not realistic nor expected that any employee who falls into one of these categories is protected from termination under all circumstances, it is important to be aware of these categories and to document as much as you can. Although it is ultimately the employee's burden to prove that despite what you say, there is evidence to support discriminatory termination, you will save yourself a major headache if you have appropriate documentation showing poor performance or inappropriate conduct as a basis for the termination. This is true even for teachers who do not fall under the Utah Order Termination Procedures Act, like provisional teachers. and charter school teachers.

Terminating bad teachers is important in the advancement of strong public education. But be sure to cross your I's and dot your T's in the process.



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UPPAC CASES

There are no UPPAC cases in May 2011.

Recent Education Case



In <u>Safford Unified</u> <u>School District v.</u>
<u>Redding</u>, 129 S. Ct. 2633 (2009), the Supreme Court reviewed a case in which a school

principal, assistant principal, and school nurse strip searched a student down to her underwear in search of an ibuprofen pill. The Court found the search unjustified.

Safford Unified School District in Arizona had a strict policy prohibiting the nonmedical use or possession of any drug on school grounds. When the assistant principal Kerry Wilson received a report from another student that 13 year old Savana Redding was giving prescription strength and over-the-counter pain pills to fellow students, he confronted Savana. He asked her if the report was true and she denied it. She agreed to allow Wilson to search her belongings and he, together with an administrative assistant Helen Romero, searched Savana's backpack, finding nothing. Wilson then instructed Romero to take Savana to the school nurse's office to

search her clothes for pills. Romero and the school nurse asked Savana to remove her jacket, socks, shoes, t-shirt, and stretch pants, leaving her in her underwear and bra. Savana was told to pull her bra out and to the side and shake it, and to pull out the elastic on her underpants. No pills were found.

Savana's mother filed suit against the school district, and the case made its way up to the Supreme Court. The Court reviewed students' Fourth Amendment rights as established in the landmark case New Jersey v. T.L.O., which held that a school needs only reasonable suspicion, as opposed to the higher standard of probable cause, to conduct a search on the student. If a school has a moderate chance of finding evidence of wrongdoing, a search is permissible. The Court then reviewed the facts of the case that led up to the search and concluded that the school had enough suspicion to justify a search of Savana's backpack and outer clothing; but the "content of suspicion failed to match the degree of intrusion" for the strip search.

The Court reasoned that prescription strength ibuprofen and over-thecounter naproxen were common pain relievers and that the drugs were not a serious threat, and that Wilson could not have suspected that Savana was hiding the painkillers in her underwear. "[A] reasonable search that extensive calls for suspicion that it will pay off." The Court concluded, "We ... mean... to make clear that the T.L.O. concern to limit a school search to reasonable scope requires the support of reasonable suspicion of danger or of resort to underwear for hiding evidence of wrongdoing before a search can reasonably make the quantum leap from outer clothes and backpacks to exposure of intimate parts. The meaning of such a search, and the degradation its subject may reasonably feel, place a search that intrusive in a category of its own demanding its own specific suspicions."

UPPAC Case of the Month

Utah Educator Standard 277-515-3 discusses the role model and civic and societal responsibilities of educators. Rule 277-515-3(A) states, "The professional educator is responsible for compliance with federal, state, and local laws." With the requirement of background checks on all new and renewing teachers, UPPAC receives at least half a dozen or so notices of teacher arrests each month. This is disconcerting to UPPAC, but even more disconcerting than the arrest itself is the attitude we've seen that "what I do in my private life is my private business."

While this may be true of your local 7-11 cashier, or cable salesman, this simply is not true of teachers. Courts have expressed time and time again that teachers serve as role models and are in a position of special public trust. Consequently, the character and conduct of a teacher may be expected to be above those of the average individual not working in so sensitive a relationship as that of

teacher to pupil.

While many of the arrests that come to UPPAC do not involve behavior that poses a threat to students, like assault or child abuse, the role model responsibilities of educators cannot be emphasized enough. One educator who met with a panel of UPPAC members to review her recent arrest for DUI did not understand initially that drinking and driving on her private time, in her private car, without any students around is setting a poor example of civic responsibility and is not appropriate role model conduct. Many educators with arrests offer as mitigating factors that it was the weekend, it was at their home, there were no students or even children around.

While we are relieved and happy to know the criminal conduct did not occur around students, educators still must understand that students or not, society is always watching.

One court in Massachusetts expressed

well the reason teachers serve as role models: "they have an extensive and peculiar opportunity to impress [their] attitude and views upon their pupils." Another court said this opportunity "serves as a subtle but important influence over their perception and value."

A Florida court, echoing this sentiment added, that as a result, educators, "must be aware of the importance of maintaining the respect and confidence of one's colleagues, of students, of parents, and of other members of the community and to achieve and sustain the highest degree of ethical conduct."

DUIs, drug possession, retail theft, and a host of other charges we've seen do not comport with positive role modeling behavior. Consequently, there would be licensing action for consequences of these offenses—especially if the court imposes a probation or a plea in abeyance.

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What is All This Talk About "Rules?"

Administrative Rules are Rules passed by the State Board of Education (and other administrative agencies and departments also, such as the Health Department, the Tax Commission, UDOT, Health and Human Services), that implement the laws passed by the Legislature. The Rules provide the logistics, timelines and procedures for making Legislative ideas (bills and statutes) work in the real world.

Over 150 public education bills were seriously discussed and debated during the 2011 Legislative Session. Many of them passed. Many of them directed the State Board of Education to write rules. The rules are significant because they explain to the practitioner—the worker bees among us-how new education programs (or revisions to ongoing programs) will work in classrooms and at school board meetings. All public education rules begin with the prefix "R277" and then receive separate numbers. All rules can be easily viewed on the Utah State Office of Education (USOE) website as rules that are "effective" or "in process." Here is a preview of Board Rules to watch: R277726 Public Education Online Programs explains logistics, procedures and timelines for implementing the legislation that allows traditional public education students to take two online courses as part of their regular school schedule. If students take the online courses from *other than their resident high school*, the state funding for those courses will go to the provider of the online course that was selected by parents and students.

Two Board Rules (R277-403 Student Reading Proficiency/Notice to Parents and R277-406 Reading Improvement Programs) implement several bills that direct schools to test K-3rd grade students in reading regularly and to notify parents at designated times if their students are reading below grade level. The rules also direct schools to offer reading remediation, to the extent of funds available, and provide for schools and school districts to report student reading data accurately to the State Office of Education.

Another Board of Education Rule, (R277-708 Enhancement for At-Risk

Students) combines funding from several programs for students at-risk—MESA, highly impacted schools, family literacy centers, to name three—into a block of funding that provides a reduced amount of funds for targeted students, but gives school districts and charter schools more flexibility and local control in spending the funds.

Follow the development of State Board Administrative Rules! They provide directions and information for educators in classrooms.



Your Questions

Q: My teaching license must be renewed by June 30, 2011. What do I have to do to renew?

A: You can complete the process online. Go to "Educator Quality and Licensing" on the Utah State Office of Education homepage. Follow the links to "License Renewal." There are several requirements for renewal, all are explained on the website. The total renewal cost is \$69.00 (before July 1, 2011) and can be paid online.

Q: I am a teacher at ABC High School in LaVerkin. I was arrested for a DUI on April 15, 2011. I have my first court date scheduled on May 25. What

What do you do when...?

should I do; I would like to continue to be a teacher?

A: A recently enacted Utah State Board of Education rule (and a district policy) requires you to report the arrest to your employing school district or charter school—within 48 hours of the arrest. If you have not yet reported the arrest, do so immediately. Within the next week or two, you will be asked to provide information to the Utah State Office of Education. Your employing school district/school may also want to talk with you about the arrest. Comply forthrightly and completely to all requests. Also respond promptly. Probably one DUI will not result in licensing action. But your timely and honest response will help to that end.

Q: I have heard that an "Ethics Exam" is a new requirement for license renewal. What is the exam about—and what happens if I don't take it or don't pass it?

A: There is an Ethics Review requirement for all license renewal beginning June 30, 2011 and for all

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The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions Cont.

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new spring 2011 license holders. The Review has 25 questions. It is impossible to fail! Begin the Review, if you do not answer one question correctly, you will see a brief pop-up tutorial to help you answer the question correctly. The answers come directly from State Board of Education Rule, R277-515 Utah Educator Standards—which may be used while you complete the Review. At the end of the Review, you can provide your personal opinion of the Review.

Q: I am under UPPAC probation for a year for financial improprieties at the school where I continue to teach and coach. I need to renew my license before June 30, 2011. I can't seem to renew online. What should I do? **A:** You will need to call the USOE Licensing Section at 801-538-7500. A representative of the Section will either give you a code allowing you to continue the renewal process online or to complete the process in the traditional, oldfashioned process.

Q: My license was suspended for one year. I would like to get my license back and teach again some day. What should I do about professional development points and can I "renew" my license even during the suspension?

A: You cannot renew your license while your license is suspended. You can renew with a lesser sanction on your license (for example, a letter of warning or reprimand) but not a suspension. You should keep track of and maintain points you have earned already through professional development but wait to submit

them until your license has been reinstated. If your license was revoked, the presumption is that your license is gone forever.



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